

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS D. McCracken,

Plaintiff,

No. CIV S-03-1047 FCD DAD P

vs.

M. SMELOSKY, et al.,

Defendants.

ORDER

Pursuant to the scheduling order filed in this case on October 19, 2004, plaintiff was required to file and serve his pretrial statement on or before September 9, 2005. The court's docket does not reflect receipt of plaintiff's pretrial statement for filing. Defendants have requested relief from filing their pretrial statement in light of plaintiff's apparent failure to comply with the scheduling order.

Accordingly, IT IS HEREBY ORDERED that:

1. Within twelve calendar days from the date on which this order is filed, plaintiff shall file and serve a declaration regarding the date on which he delivered his pretrial statement to prison authorities for mailing. If plaintiff did not deliver his pretrial statement to prison authorities for mailing on or before September 9, 2005, as required by the October 19, 2004 scheduling order, plaintiff's declaration must show good cause for such failure. Plaintiff is

1 cautioned that failure to respond to this order in a timely manner will result in a recommendation  
2 that this action be dismissed for failure to prosecute and for failure to comply with court orders;

3           2. If plaintiff did not file and serve his pretrial statement prior to his receipt of  
4 this order, plaintiff shall file and serve his pretrial statement concurrently with the declaration  
5 required by this order;

6           3. Defendants' September 19, 2005 request for relief is granted in part;

7           4. Defendants' pretrial statement shall be filed and served within fourteen days  
8 after plaintiff's pretrial statement is or was placed in the mail; and

9           5. Pretrial conference is continued from September 30, 2005, to October 21,  
10 2005.

11 DATED: September 20, 2005.

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14 DALE A. DROZD  
15 UNITED STATES MAGISTRATE JUDGE

14 DAD:13  
15 mccr1047.pts